

Group IV: Claims 1, 8, 9 and 11, when X is CH and R3-R4 forms ring size is other than ethylene, drawn to various core with one nitrogen ring compounds;  
and

Group V: Claims 1, 8, 9 and 11, when X is CH or N and R3 and R4 are independent H or lower alkyl, drawn to amine compounds.

Applicants have elected, with traverse, Group I: Claims 2-7, drawn to X is N, R3-R4 is ethylene compounds i.e., piperazines for examination. In addition, Applicants elect, with traverse, for search purposes only, the compound of Example 2 (page 32), 1-acetyl-4-(4-fluorophenylcarbamoyl)piperazine for examination. Claims 1-9 and 11 read on the elected species.

Restriction is only proper if the claims of the restricted groups are independent or patentably distinct and there would be a serious burden placed on the Examiner if restriction is not required (M.P.E.P. § 803). The burden of proof is on the Examiner to provide reasons and/or examples, to support any conclusion in regard to patentable distinctness (M.P.E.P. § 803). Applicants respectfully traverse the restriction requirement on the grounds that the Examiner has not carried the burden of providing sufficient reason and/or examples to support any conclusion that the claims of the restricted groups are patentably distinct.

The Examiner states that "[c]ompounds of groups I-V are independent and distinct because they have different core structure[s]. Lacking of a common core is one of the basis for restriction. In re Harnish, 106 USPQ 300. The structure of groups I-V differ to such an extend that a reference anticipating one group would not render another group obvious. Particularly it was delineated in the parent application that prior art evidenced that the X is N "core" do not share the same utility as X is CH compounds and is anticipated by CA 74:42381 (RN 23492-81-1). The search for each group is not required for another group and is not coextensive of each other. Without restriction, the searches of the groups would be

enormous encompassing enormous class and subclasses, especially, without a species election, a classification can not be determined.”

Applicants note that the claimed compounds do have the common core structure given in Formula (I) of the specification (page 2). Therefore, the Examiner's reasoning is nearly a restatement of the Examiner's conclusion that the groups are patentably distinct. As the Examiner has provided insufficient reasons in her belief, the Examiner has not met the burden placed upon her, and accordingly, the restriction is believed to be improper and should be withdrawn.

In addition, Applicants respectfully traverse the Election of Species Requirement on the grounds that the Office has not provided any reasons, whatsoever, to support the conclusion of patentable distinctness. Rather, the Office has merely stated the conclusion.

Applicants make no statement regarding the patentable distinctness of the species, but note that for restriction to be proper, there must be a patentable difference between the species as claimed (MPEP § 808.01(a)). The Office has not provided any reasons or examples to support a conclusion that the species are indeed patentably distinct. Accordingly, Applicants respectfully submit that the restriction is improper, and Applicants' election of species is for examination purposes only.

Accordingly, and for the reasons presented above, Applicants submit that the Office has failed to meet the burden necessary in order to sustain the Election of Species Requirement. Withdrawal of the Election of Species Requirement is respectfully requested.

With respect to the elected species, Applicants respectfully submit that, should the elected species be found allowable, the Office should expand its search to the non-elected species.

Finally, Applicants respectfully submit that the Office has not shown that a serious burden exists in searching the entire application.

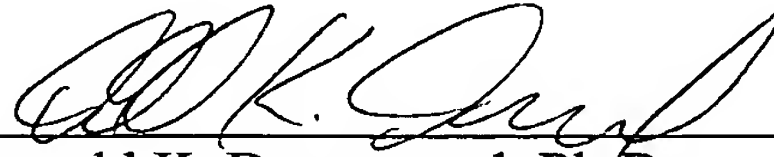
Application No. 10/618,743

Reply to Office Action of February 4, 2005

Applicants submit this application is now in condition for examination on the merits  
and early notification of such action is earnestly solicited.

Respectfully submitted,

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(OSMMN 06/04)

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